



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12337001

Date: JUL. 20, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a graduate student, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that he was an individual of exceptional ability.

On appeal, the Petitioner submits a brief asserting that he meets the requirements of the requested classification.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Exceptional Ability

The Petitioner maintains that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the official academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).⁴

In the appeal brief, the Petitioner claims that he also meets the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), and the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). We have reviewed all the evidence in the record and conclude that it does not support a finding that the Petitioner meets the requirements of at least three criteria.

1. Evidentiary Criteria

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

On appeal, the Petitioner indicates that he received "total scholarship awards of over \$100,000," and it "requires me to be at the top 2% of my graduate program." He further states that "I believe this accomplishment demonstrates a degree of expertise significantly above the ordinarily encountered." The Petitioner submits a letter from the [] Financial Aid Department awarding the Petitioner the [] Thesis Scholarship in the amount of \$23,246 applied to the 2019-2020 academic year. The Petitioner previously submitted two letters from the [] Financial Aid Department granting the Petitioner a scholarship of \$43,760 for the 2018-2019 academic year, and a scholarship of \$45,592 for the 2019-2020 academic year. The Petitioner also submitted an article dated September 18, 2018, from [] that stated the Petitioner was a recipient of the [] EU Scholarship which "covers the full tuition of the Master of Architecture 2 program for a citizen of the European Union."

Although the Petitioner contends on appeal that the scholarships awarded to him requires him to be the top 2% of the graduate program, the Petitioner did not provide any corroborating evidence to

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner presented his Bachelor of Arts degree in Architecture from the [] University and The University of [] as well as his academic transcript.

establish this claim. In addition, the record does not reveal the criteria for receiving these scholarships and whether they are awarded for merit, need, or some other eligibility requirement.

Moreover, the Petitioner has not submitted evidence to establish that this academic scholarship qualifies as either a salary or remuneration for services. Without additional information on the scholarship, the Petitioner has not established that disbursements from the scholarship could be considered either salary or remuneration for services, as contemplated by the regulation.

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of his claimed exceptional ability relative to others working in the field.⁵ Here, the Petitioner has not offered documentation showing that his earnings are indicative of exceptional ability relative to others in his field. Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated that he meets this regulatory criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F).

On appeal, the Petitioner states that in the denial notice there is only a “mention” of the recommendation letter submitted by [redacted] CEO of the [redacted]. In addition, the Petitioner noted that the Director did not discuss the letter discussing his work with the “renown [sic] architect [redacted]” or the letter by the [redacted] Business Council “confirming my participation in the competition regarding [redacted] in California.”

The letter of recommendation from the studio director of the [redacted] confirmed that the Petitioner worked as an intern from November 2016 through May 2017. The letter stated that the Petitioner worked on a [redacted] project in [redacted] and that he “gave a solid contribution to the success of the project.” The letter also stated that the Petitioner participated in a competition in [redacted] and “showed a large range of software skills allowing him to jump in multiple tasks and a real artistic sensitivity and exigency,” and the author “noticed as well his mental strength puts him in the top 10% of trainees I used to work with.” Upon review of this letter, it does not appear that the author discusses achievements and significant contributions to the industry but instead indicated that the Petitioner performed well in his intern position.

The letter from the communications director of the [redacted] Business Counsel stated that the Petitioner “successfully participated in the 2019 [redacted] Competition.” The letter does not provide any detail about the competition and whether the Petitioner won or placed in the competition. Without any information about this competition, it is impossible to determine the Petitioner’s achievement and significant contributions to the industry or field by peers.

Further, the Petitioner submitted a letter from the Director/CEO of [redacted] who stated that the Petitioner is doing “exemplary work in his Graduate Studies,” and “he was a crucial participant in all school work and research and the project for [redacted] submitted to the [redacted] as a

⁵ See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 21* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

potential prototype which could assist in housing the homeless in California and in eliminating construction work,” and the team received second prize. The letter also stated that the Petitioner is a “prolific student and future architect” and is “currently developing very advance research in the technology field related to design and architecture.” As noted in the letter, the Petitioner is a strong student and has achieved academic accomplishments, but the letter does not provide sufficient evidence of his achievements and significant contributions to the industry or field. The author also stated that the Petitioner is developing advance research in the technology field related to design and architecture but did not provide any details of this research and if it is a significant contribution to the field of architecture.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification. As the Petitioner has not met the threshold requirement for this classification, further analysis of his eligibility for a national interest waiver would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a as an individual of exceptional ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.